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COLLECTION

Great Britain

Of the SEVERAL

PROTESTS



House of LORDS,

In the SESSION of PARLIAMENT
in the Years 1722 and 1723.

The SECOND EDITION.

To which is Added,
The HEADS of the late Bp. of *Rochester's*
SPEECH, before the House of LORDS.

L O N D O N;

Printed for A. M O O R, and Sold by *Richard Macey*, in *London-House-Yard* near *St. Pauls Church*. 1723.

(Price Sixpence.)

*Some HEADS of the late Bishop of Rochester's
SPEECH in the House of LORDS,
to this Effect.*

HE began with complaining of the Hardships of his Imprisonment in the *Tower*; then he went thro' the several Parts of the Evidence against him; insisting upon it, there was no Manner of positive Proof of any one Thing that he was charg'd with; insinuated as if it was a Malicious Design of some Body who wrote Letters, to be intercepted; and that he could no Way prove his Innocence, except he could prove a Negative: Desir'd the Preamble of the Act against Sir *John Fenwick* might be read, which was done, and then made Remarks on the same: Mention'd the Dog *Harlequin*, and declar'd he knew nothing about it, but believ'd one intercepted Dog might do some Persons as much Good as ten intercepted Letters: Said, That there was no Bounds to be set to the Parliament, who could do more than even the Sovereign Legislature, which could do nothing that was Evil: Desir'd their Lordships to consider what Motives could induce him to be engag'd in this Conspiracy: As to Ambition, he never intended to be higher than he was: As to Money, he always slighted it; and that out of the Bishoprick of 500*l.* per Ann. he had laid out 2000*l.* in Repairs, the Heirs of his Predecessors not being in a Capacity of making them: He never desir'd any thing for Delapidations: Said, That if the Allegations of the Bill were true, it must be very strange that there should not appear any Correspondence between him and the late Duke of *Ormond*, for whom he had as much Value, as the Good of the King and Country would permit him: He complain'd of the Bill beyond all Example, quoting a Text: *Against an Elder, receive not an Accusation except from the Mouth of two or three Witnesses.* I am more than an Elder, and yet am accus'd by two or three Hearsays: That he would willingly submit to the Punishment of the Bill, rather than the said Bill should pass, and would go Abroad pleas'd with it: That his Country had lost none of its Liberties upon his Account: Mention'd the Time fix'd upon him to be very improper, his Lady being Sick, and Dy'd soon after: That all the People at *Bromley* was satisfy'd no Body came near him at that Time; and that afterwards, he had too much Business on his Hands, to be engag'd in the said Conspiracy, viz. The Building the Dormitory at *Westminster*, the Repair of the *Abby*, directing a College at *Bromley*, An Enquiry into the Time of writing the Four Gospels, and examining the Library at *Westminster*. And concluded, with saying, *The Lord gave, the Lord has taken away: Blessed be the Name of the Lord.*

Die Jovis, 11 Octobris. 1722.

The Amendments in the 16th and 17th Lines of the Bill for Suspending the *Habeas Corpus Act*, in Relation to the Continuance of the said Bill, were read a Second Time.

And the Question being put, whether to agree with the Committee in the said Amendments.

It was Resolved in the Affirmative.

Dissentient.

I. **B**ECAUSE the Act, commonly called the *Habeas Corpus Act*, is admitted on all Hands to be the great Bulwark of the Liberty of the Subject, and therefore, altho' in Cases of actual Rebellion, and intended Invasion, that Act has been, at Times, before suspended, yet it was done sparingly and by Degrees; and the utmost Term, for which it has been hitherto suspended, at one Time, has been the Term of Six Months: which Consideration, puts us under a very melancholy Apprehension, for the very Being or Effect of that excellent Law, since the very Suspension of it for the Term of a Year, will be full as good an Authority in Point of Precedent, for the Suspending it on another Occasion, for the Term of two Years, as any former Precedent is now for the present Suspension, during one Year and more.

II. The Detestable Conspiracy, which occasions the present Suspension, having been discovered and signified to the City of *London* about Five Months since, and Divers imprison'd for it a considerable Time past, we cannot but conceive it to be highly unreasonable to suppose that the Danger of this Plot, in the Hands of a Faithful and Diligent Ministry, will continue for a Year and more, yet to come; and that in so high a Degree, as to require a Suspension of the Liberty of the Subject (for so we take it to be) during all that Time.

III. His Majesty having not visited his Dominions Abroad these two last Years, will very probably leave the Kingdom the next Spring, to that End; in which Case this great Power of Suspecting and Imprisoning the Subjects at Will, and detaining them in Prison, till the 24th of *October* 1723; and for as much longer Time, till they can after that take the

Benefit of the *Habeas Corpus Act*, (if they can then do it at all) will be lodged in the Hands of some of our Fellow Subjects, who we are not so sure, will be above all Prejudices and Partialities, as we are, that his Majesty will.

IV. This weakens the Provisions made in the Bill for the Lords and Members of the other House of Parliament, that they shall not be committed or detained sitting the Parliament, without the Consent of the Houses respectively, since it is very probable the Parliament will not be sitting the greatest Part of the Time, for which this Bill, if Enacted, will continue a Law, and such is the Weakness of Human Nature, that we cannot be assured, but that the Apprehension of what may befall any Member of Parliament, while the Parliament is not sitting, may have some Influence on the Freedom of acting and debating in Parliament.

V. The Dictatorial Power was always ended, or laid down immediately when the urgent Occasion for it was over, and was never continued much longer till a little before that great State (from all which others draw so many Maxims of Government) lost its Liberties.

<i>W. Ebor.</i>	<i>Scarsdale.</i>	<i>Hay.</i>
<i>Craven.</i>	<i>Anglesey.</i>	<i>Bathurst.</i>
<i>Litchfield.</i>	<i>Osborn.</i>	<i>Aylesford.</i>
<i>Asbburnham.</i>	<i>Trevor.</i>	<i>Masham.</i>
<i>Cowper.</i>	<i>Bingley.</i>	<i>Uxbridge.</i>
<i>Strafford.</i>	<i>Fr. Cestrien.</i>	<i>Gower.</i>
<i>Guilford.</i>		

Die Jovis, 11 Octobris.

Then the Bill was Read a third Time, and the Question was put, whether this Bill shall pass?

It was Resolved in the Affirmative.

<i>Dissentient.</i>	<i>Guilford.</i>	<i>Lechmere.</i>
<i>Scarsdale.</i>	<i>Bingley.</i>	<i>Osborn.</i>
<i>Litchfield.</i>	<i>Asbburnham.</i>	<i>Anglesey.</i>
<i>Bathurst.</i>	<i>Craven.</i>	<i>Masham.</i>
<i>Cowper.</i>	<i>Strafford.</i>	<i>Hay.</i>
<i>Gower.</i>		
<i>Uxbridge.</i>		

Die

Die Veneris, 26 Octobris 1722.

A Motion was made, and the Question was put, that this House does consent to the Committing and Detaining *Thomas Duke of Norfolk*, on Suspicion of High-Treason, pursuant to the Act passed in this present Session of Parliament, Entitled, *An Act to impower his Majesty to Secure and Detain such Persons as his Majesty shall suspect are Conspiring against his Person and Government.*

It was Resolved in the Affirmative,

*Dissentient.
Anglesey.*

I. Because we apprehend it to be one of the ancient undoubted Rights and Privileges of this House, that no Member of the House be Imprisoned or Detained during the Sitting of Parliament, upon Suspicion of High-Treason, until the Cause or Ground of such Suspicion be communicated to the House, and the Consent of the House thereupon had to such Imprisonment or Detainer; which ancient Right and Privilege is recognized and declared in plain, express and full Terms in the Act passed this Session of Parliament. To which the Message, from his Majesty, refers.

II. Because it appears clear to us, not only from former Precedents, even when no such Law was in being as that above-mention'd; but also from the necessary Constitution of the Proviso therein, concerning the Privileges of Parliament, that the House is entitled to have the Matter of the Suspicion communicated to them, in such Manner as is consistent with the Dignity of the House, and will enable them to deliberate, and found a right Judgment thereupon, for, or against the Imprisonment or Detainer of the Person concerned: But to maintain, that whilst that Law shall be in force, it shall be sufficient, in order to obtain the Consent of the House, to communicate a General Suspicion, that a Member of the House is concerned in a traiterous Conspiracy, without disclosing any Matter or Circumstance to warrant such Suspicion, is, in our Opinion, an unjustifiable Construction of the said Proviso, and such as wholly deprives the House of the Liberty of giving their free and impartial Advice to the Throne on this Occasion. And such a Construction being made upon a Law, so plainly intended by the Wisdom of
this

this parliament, to assert the Privilege of both Houses, appears to us to prevent the plain Words and Meaning of it, in such Manner as renders it wholly destructive of those very Privileges intended to be preserved.

III. Because his Majesty, having in Effect, required the Judgment and Advice of the House, touching the Imprisonment and Detainer of the Duke of *Norfolk*, we ought not, as we conceive, either in Duty to his Majesty, or in Justice to the Peer concern'd, to found our Opinion, concerning the same, on any Grounds, other than such only as his Majesty has been pleas'd to communicate in his Message; and his Majesty by his Message having communicated only a General Suspicion, we think we cannot, without the highest Injustice to the Duke, and the most palpable Violation of one of the most valuable Privileges belonging to every Member of this House, give our Consent to his Imprisonment or Detainer, and thereby make ourselves Parties to, and in some Degree the Authors of such his Imprisonment, until we have a more particular Satisfaction touching the Matters of which he stands suspected; more especially, considering the long and unprecedented Duration of the Act above-mentioned, whereby the Benefit, not only of the Act, commonly call'd the *Habeas Corpus Act*, but of *Magna Charta* itself, and other valuable *Laws of Liberty*, are taken from the Subjects of this Realm; and extraordinary Powers are given to the Persons therein mentioned, over the Liberties of the People, for Twelve Months and upwards.

IV. Because we think it is inconsistent, as well with the Honour and Dignity, as with the Justice of this House, in the Case of the meanest Subjects, to come to Resolutions for depriving them of their Liberty, upon other than clear and satisfactory Grounds; but as the Members of both Houses of Parliament, are, by the Laws and Constitution of this Kingdom, invested with peculiar Rights and Privileges, of which the Privilege before-mention'd is a most Essential one, as well for the Support of the Crown itself, as for the Good and Safety of the whole Kingdom, we cannot, as we conceive, without betraying those great Trusts which are repos'd in us, as Peers of this Realm, agree to a Resolution, which tends, in our Opinion, to subject every Member of this House, even Sitting the Parliament, to Unwarrantable and Arbitrary Imprisonments; and we have the greater Reason to be jealous of the Infringement of this privilege on this Occasion, because it had been very easy, as we think, for those who had the Honour

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nour to advise the framing the said Message, to have Commu-
nicated to this House the Matter of which the Duke of *Norfolk*
stands suspected, in such a manner as might be consistent
with the Privileges of this House, and at the same time to
have avoided any Danger or Inconvenience to the Crown,
with regard to the future Prosecution of the said Duke, if
any such shall be.

V. It is the known Usage and Law of Parliament, that
this House will not permit any Peer to be sequestred from
Parliament, on a General Impeachment of the Commons,
even for High-Treason, till the Matter of the Charge be
specified in an Article Exhibited to this House, which ex-
plains to us the Nature of the Privilege intended to be secur-
ed by the Proviso, and is the highest Instance of the Care of
this House, to preserve it from being Violated upon any Pre-
tence whatsoever: but in our Opinions, it must Create the
greatest Inconsistence, and Repugnancy in the Proceedings
of the House, to consent that a Peer of the Realm should be
Imprison'd or Detain'd, sitting the Parliament, on Suspicion
of High-Treason only, not Warranted for ought appears to
us, by any Information given against him upon Oath or other-
wise, and no particular Circumstance of such Suspicion being
Communicated to the House.

VI. Because a Resolution so ill grounded as this appears to
us, may produce very ill Effects in the present unhappy Con-
juncture of Affairs, by Creating fresh Jealousies in the Minds
of His Majesty's Subjects, who cannot fail of Entertaining
certain Hopes of the Safety of His Majesty's Person and Go-
vernment against all his Enemies, from the Advice and Assis-
tance of both Houses of Parliament, whilst they continue in
full Enjoyment, and free Exercise of their Ancient and Legal
Rights and Privileges, but on the other Hand, may be a-
larm'd with new Fears, for the Honour and Safety of His
Majesty and His Government, by a Resolution taken by this
House, for the Imprisonment of a Peer of the Realm in such
a manner as in our Opinion is highly Injurious to his Person,
and also to the Privilege of every other Peer of this Realm,
and which may prove of fatal Consequence to the Constitu-
tion of both Houses of Parliament.

W. Ebor.
Oxford.
Bingley.
Uxbridge.
Osborn.
Bathurst.

Scarfsdale.
Hay.
Comper.
Guisford.
Compton.
Foley.

Strafford.
Fr. Cestrien.
Ashburnham.
Lechmere.
Trevor.
Bristol. *Die*

Die Luna, 21 Jan. 1722.

A Motion was made, that the Judges of the King's Bench be order'd to cause the Tryal of *Christopher Layer*, Esq; to be forthwith Printed and Publish'd, the same being first perus'd by the King's Council.

And a Question being Stated thereupon, after Debate

The previous Question was put, whether the said Question should be now put.

It was Resolv'd in the Negative.

Dissentient.

I. Because it appear'd to us on the Debate of the main Question, that there has been an unnecessary and affected Delay in the Printing and Publishing the said Tryal : It being full two Months since *Christopher Layer* was try'd, and Direction having been given for the speedy Publishing thereof, so long since as the 27th of *November* last, as appears by an Advertisement printed by Authority in the *Gazette*, and it having been allow'd in the Debate, that the Delay was extraordinary, and no Fact having been laid before the House sufficient as we apprehend, to excuse such a Delay, we think that the main Question ought to have been put, as the only Security in our Opinion, against any further Neglect, and to prevent any Imputation on the Honour of the House, for countenancing or conniving at such Delay.

II. This House having receiv'd no manner of Satisfaction since his Majesty's most gracious Speech from the Throne, touching the horrid Conspiracy therein communicated, and no Step having been taken for ought appears to us, either in Parliament or elsewhere, for obtaining the Justice due by the Laws of the Land to any of the Conspirators, except the said *Layer*, tho' his Majesty was pleas'd to assure this House in his Speech from the Throne, that some of the Conspirators were then taken up and secur'd. We think that the main Question ought to have been put, whereby the Publication of the said Tryal might have been quicken'd, and thereby the Nation receiv'd such Satisfaction concerning the said execrable Conspiracy, as could be collected from the said Proceeding, and this House have been enabled to make Use thereof, as shou'd appear necessary in their Wisdom for the Honour, Interest and Safety of his Majesty and his Kingdoms.

III. Because

III. Because we are apprehensive that the Delay in publishing the said Tryal, may have contributed to create Jealousies concerning the said Conspiracy, and may have encourag'd ill affected Persons to foment the same, to the great Prejudice of his Majesty's Government. And as in our Opinion, the speedy publishing the said Tryal, if the same had been done, might have conduc'd to the Prevention of those Mischiefs, we also conceive, that the further Growth of them might have been check'd, if the main Question had been put and carried in the Affirmative.

IV. Because we think it of great Consequence to his Majesty's Service, that the Publication of the said Tryal shou'd have been made under the strictest Security against any Partiality, or other Abuse relating thereto; and therefore we think the main Question ought to have been put, whereby the Care and Inspection thereof wou'd have been lodg'd by the Authority of this House in the Hands of the Judges, to whom it properly belongs, and its falling into any other Hands, not so proper, or not so immediately Responsible to this House, wou'd have been prevented.

Anglesey.

Craven.

Hereford.

Weston.

Lechmere.

Bathurst.

Osborne.

Trevor.

Compton.

Ashburnham.

Strafford.

Foley.

Aylesford.

Gower.

Fr. Cestriens.

Cowper.

Then a Motion being made, and the Question being put, that the Judges of the King's Bench, do attend in their Places on *Thursday* next, and that the King's Council who were concern'd in the Tryal of *Christopher Layer*, and also the Council for the said *Layer* at the said Tryal, and Mr. *Sam. Buckley*, and the Person or Persons who took the said Tryal in short Hand, do attend at the Bar of this House, at the same Time.

It was resolv'd in the Negative.

Dissentient.

I. Because the House having resolv'd, that the Question for ordering the Printing the Tryal of *Layer*, shou'd not now be put, we are of Opinion, that it is thereby made necessary for the Honour of the House, that the Occasion of the Delay shou'd be enquir'd into; for without such Enquiry, we are

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appre-

apprehensive that the Proceedings of this House may be misconstrued, as tending to countenance such Delay.

II. Because we think it the Right of this House, to enquire into all Neglects or Abuses which concern the Publick, and tho' it was objected in the Debate, that such Enquiry might carry some Imputation on the Judges, or other Persons concern'd, we think that that Objection may be equally assign'd against all Enquiries, but it is inconsistent with the Honour and Dignity of the House, and ought not, as we conceive, be put in the Ballance with the publick Service, to which the Question in our Opinion has an apparent Tendency.

Stratford.
Bathurst.
Osborne.
Aylesford.
Ashburnham.

Cowper.
Fr. Cestrien.
Lechmere.
Foley.
Brooke.

Gower.
Treuer.
Anglesey.
Craven.
Compton.
Weston.

Die Martis, 29 Jan. 1722.

The House (according to Order) proceeded to take into Consideration, the Protestation entred the 21st Instant, in relation to the Printing of *Layer's* Tryal.

And the Reasons being read.

It was upon the Question

The Words interlin'd were propos'd as an Amendment after the Word (Debate) but on the Question refus'd.

Resolv'd, That it is a Groundless Assertion, in the said Protestation, That it appear'd on the Debate

To the Lords who sign'd the said Protests,

That there had been an unnecessary and affected Delay in the Printing and Publishing the Tryal of *Christopher Layer*, and the utmost Indignity to this House,

This Interlineation also propos'd after the Word (Question) but refus'd.

In the Opinion of the same Lords, that any Question

to suggest was necessary to have been put for preventing an Imputation on the Honour of this House, for countenancing or conniving at such Delay.

Dissen-

Dissentient.

I. Because the Assertion and Suggestion in the Protestation intended to be censured by the Resolution, are qualified, as the Amendments offer'd, would have stated them, if admitted, by being restrain'd to the Opinion of the Lords who sign'd the Protestations; but those Restrictions are wholly omitted in the Resolution, and we are clearly of Opinion, that if the Assertion and Suggestion had been set forth in the Resolution, as they stand in the Protestation, they could not have been censured with any Colour of Justice, but that the said Omission being, as we conceive, of a Circumstance extremely material, we think the Censures contain'd in the Resolution are not applicable, but to such as are of a very different Nature.

II. The restraining the Assertion us'd in the Protestation, to the Apprehension or Opinion of the Lords protesting, where it contradicts the Opinion of the House, is as we conceive, so much of the Essence of a Protestation, with Reasons, that of the great Number of Instances of such Protestations standing on the Journals of this House, not one would be found Regular among them, if that due Caution and Respect to the Opinion of the Majority, was omitted; and therefore it seems clear to us, that the like Censuring might be as justly passed on all the Protestations with Reasons that were ever entred, if they were recited and represented in the same Manner as we conceive this to be.

Litchfield.
Aberdeen.
Osborne.
Gower.
Compton.
Brooke.
Lechmere.
Trevor.

Exeter.
Hereford.
Foley.
Fr. Cestriens.
Ashburnham.
Anglesey.
Montjoy.
Uxbridge.

Bathurst.
Scarsdale.
Guilford.
Bingley.
Cowper.
Strafford.
Hay.
Craven.

Then it was moved to Resolve, that the said Tryal has been Printed and Published, with as much Expedition, as the Length and Nature of the said Tryal, and the careful Perusal and Examination thereof by the Judges, could admit of, and in as little Time as has been generally accustomed in the like Cases; and that it is an unjust Insinuation, that the Authority of this House was wanting, for lodging the

Care and Inspection of the said Tryal in the Hands of the Judges; or that there was any Danger of its falling into other Hands; or that the same had been under the Direction of any others whatsoever, besides the Judges.

And a Question being stated thereupon, it was proposed to leave out the latter Part of the Question from the Word (Cases, which being objected to

The Question was put, whether those Words shall stand part of the Question.

It was Resolved in the Affirmative.

Dissentient.

Because we conceive it to be contrary to the Nature and Course of Proceedings in Parliament, that a complicated Question, consisting of Matters of a different Consideration, should be put, especially if objected to, that Lords may not be deprived of the Liberty of giving their Judgments on the said different Matters, as they think fit.

Signed by the same Lords.

Then the Question, as at first proposed, was put, and Resolved in the Affirmative.

Dissentient.

I. Because when a Question was moved on the 21st of this Instant to appoint a Day for this House to inquire if the Printing of *Laver's* Tryal was dispatched with all proper Expedition; or if not, where the Fault lay; which would naturally have led us to have seen if it had fallen into any other Hands than it should have done; though we thought it highly Reasonable, the Majority of this House then did not; and we are yet willing to have gone into the same Examination, but we cannot conceive it to be fit, or agreeable to the Dignity, or Regular Proceeding of this House, to vote or Resolve so many Matters of Fact as are contained in this Resolution, without any Examination of all, or any Evidence given, to support them; and which in their Nature, as we think, cannot be within the Knowledge of any one Lord present in the Debate.

II. As for the Insinuation, with which the Protestation is charged by this Resolution, we do not apprehend the Protest to be justly liable to that Charge; but supposing it to be so, we cannot yet but be of Opinion, that the permitting
that

that Matter to have been fully enquired into, would have been the properest and best Method of preventing or answering that Insinuation.

Signed by the same Lords, except the Lord Ashburnham.

Then it was moved to Resolve, that this House, not capable of doubting of the Truth of the Traiterous Conspiracy, communicated to them by his Majesty's most Gracious Speech from the Throne, has ever since that Time, receiv'd very great Satisfaction from some convincing Proofs touching the same, and is firmly persuaded, that such further Satisfaction will be yet in due Time given, as must render it impossible for any one to doubt thereof.

And a Question being stated thereupon. After Debate

The previous Question was put, whether that Question shall be now put?

It was Resolved in the Affirmative.

Dissentient.

I. Because to the best of our Apprehensions, no Part of the Protestation gave Occasion for the putting of such a Question; for it was as we conceive, clearly admitted in the Protestation, that his Majesty's most Gracious Speech from the Throne, had given Satisfaction as to the Truth of the Conspiracy in General; and the excepting *Layer's* Tryal therein, did plainly allow that the said Tryal had as far as that went, opened the Particulars; and yet the Resolution, as we take it, carries with it an Insinuation, that the Protestation had raised a Doubt concerning the Truth of the said Traiterous Conspiracy, which Insinuation is, in our Opinion, entirely groundless.

II. The said several Resolutions, importing Censures, as we conceive, on the said Protestation, and being not warranted by more than one Precedent that we can find, on the Journals of this House; and the Liberty of Protesting, with Reasons, being an unquestionable Right, and essential Privilege of the whole Peerage, we are of Opinion, that the said Resolution tends to discountenance and discourage the due Liberty of Protesting, and in that Respect may be, as we apprehend, of dangerous Consequence.

Signed by the same Lords, except the Lord Ashburnham and Lord Trevor.

Then

Then the main Question was put, and carried in the Affirmative.

Dissentient.

Signed by the same Lords, as signed the Above.

Die Sabbati, 16 Feb. 1722.

The Amendments to the Bill for punishing Mutiny and Desertion were (according to Order) Reported, and the Amendments for inserting the Number of Forces, thought proper to be kept on Foot for the Year ensuing, consisting of 16449 effective Men, Officers included: and 1815 Invalids, being read a second Time:

The Question was put, whether to agree with the Committee in this Amendment.

It was Resolved in the Affirmative.

Dissentient.

I. Because, as we conceive, the Keeping an Army of Regular Troops in this Kingdom, under Martial Law, consisting of a greater Number than what we take to be necessary for the Guard of the King's Person, and Defence of the Government, is of the most dangerous Consequence to the Constitution of this Kingdom; and in our Opinion, may bring on a Total Alteration of the Frame of our Government, from a Legal and Limited Monarchy, to a Despotick; and we are induced to be of this Judgment, as well from the Nature of Armies, and the Inconsistency of so great a Military Power and Martial Law with the Civil Authority, as from the known and universal Experience of other Countries in Europe; which by the Influence and Power of Standing Armies in Time of Peace, have from Limited Monarchies, like ours, been changed into Absolute; for which Reason we cannot give our Consent to this Amendment, whereby the present Number of Troops, amounting in the whole (Invalids included) to Fourteen Thousand odd Hundred Men, (which we think abundantly sufficient for all good Purposes) will be increased to near Four Thousand more, altho' there be at this Time no Ground to apprehend an Invasion from a Foreign Enemy; or as we believe, any Insurrection or Rebellion at Home.

II. Be-

II. Because, that which seems to have given Rise to this Augmentation of the Army, is the late Treasonable Conspiracy, which his Majesty, at the Opening of this Session, acquainted his Parliament with, and that Conspiracy having been discovered above Eight Months since, and the further Detecting and Punishing the Conspirators, having been ever since, in the Hands of a Faithful and Vigilant Ministry, we cannot think it at all probable, the Conspiracy should be still carrying on on; or if any Dregs of it should be yet remaining, that the Government cannot be easily secured by the Civil Authority, assisted with so great a Number of Troops as are at present on Foot; and therefore we cannot think our selves Justifiable to the Kingdom, whose Rights and Liberties we are entrusted to preserve, had we given our Votes for this Augmentation of Troops, when no evident Necessity, or just Occasion appeared to us for such an Increase.

III. Because the Act passed this Session to Enable his Majesty to apprehend and detain in Custody, any Person suspected of being engaged in any Treasonable Conspiracy for above Twelve Months, (tho' that Power had never been granted to the Crown before, for half that Time at once, and that when there was an actual Rebellion, or an expected Invasion) was so great a Power added to the former Authority of the Crown, that we cannot but think all together sufficient to prevent any Mischief from Treasonable Plots or Practices, which may be attempted or carried on by any Rebellious or Disaffected Persons, without increasing the Army, which in its present State is not submitted to but as Necessary, for avoiding a greater Evil.

IV. Tho' the intended Augmentation by this Bill is only for one Year, yet, we fear, this will be a Means for continuing them in Perpetuity; for we think it probable, there will, at all Times hereafter, be easily found, as good Reason for continuing this Increase, as there is now for making it.

V. Because we think the greatest, and only lasting Security to his Majesty and his Government, is in the Hearts and Affection of his Subjects; and if the Disaffection or Discontents, which have of late happen'd from some unfortunate Proceedings, are thought by any to be an Argument for raising more Forces, we think it the Duty of all good Subjects, who wish well to his Majesty and our present happy Establishment, to use their best Endeavours for curing those Discontents, by removing or lessening the Occasions thereof, and consequently, that there should not be an Augmentation of the

the Army, which is already sufficiently Burthenſome to the Subject, both by the great Charge of maintaining them, and by the Uneaſineſs to the Places where they are Quarter'd becauſe thereby the Charge to the Subjects will be conſiderably increaſed, which, as we apprehend, ought moſt carefully to be avoided in our Circumſtances, when the Load of Taxes is already ſo very great, and the Kingdom involved in ſo immenſe a Debt, that nothing but the moſt prudent Oeconomy and good Huſbandry can give us any probable Proſpect of Eaſing it; and therefore not being convinced of any real or juſt Grounds for ſuch an Increaſe of Troops, do fear, that this will not take away or leſſen, but rather increaſe the Diſcontents and Diſaffection of the People; and in that Reſpect, weaken his Maſteſty's Government in a greater Degree, than it will be ſtrengthened by this Addition of Forces, allowing ſomething for the Poſſibility of ſall Muſters.

<i>W. Ebor.</i>	<i>Strafford.</i>	<i>Scarſdale.</i>
<i>Foley.</i>	<i>Litchfield.</i>	<i>Fr. Ceſtrien.</i>
<i>Gower.</i>	<i>Trevor.</i>	<i>Aſhburnham.</i>
<i>Uxbridge.</i>	<i>Poulet.</i>	<i>Hay.</i>
<i>Aberdeen.</i>	<i>Compton.</i>	<i>Cowper.</i>
<i>Montjoy.</i>	<i>Osborne.</i>	<i>Oxf. and Mortimer.</i>

Die Sabbati, 9 Martii 1722.

Complaint was made to the Houſe, that in the Depoſition of one *Pancier*, in the Printed Report of the Committee of Commons appointed to Examine Mr. *Layr* and others, it is mention'd, that one *Skeene* told him the Lord *Strafford*, and Lord *Kinnoule* were privy to Deſigns againſt the Government:

And it being thereupon mov'd that thoſe two perſons might be required to appear immediately at the Bar of this Houſe, in order to their being Examin'd:

The Queſtion was put whether the ſaid *Pancier* and *Skeene* ſhall be immediately ſent for to appear at the Bar of this Houſe.

It was Reſolv'd in the Negative,

Content, 29.

Not Content, 64.

Diſſe

Dissentient.

I. Because the Earl of *Kinnoules* and the Earl of *Strafford*, having severally complain'd to the House, that they find themselves Reflected on, in a Printed Deposition of one *Andrew Pancier*, wherein he Deposeth, that one *Skeene* (now in Custody) had acquainted him among other Things, that the Earls knew of the late Conspiracy, and were concern'd in the Management of it here; and the said Earls alledging, that they did not see by the Report in which that Deposition is found, that the said *Skeene*, tho' in the Hands of the Government, had been so much as question'd touching the said Hearsay (which Observation we find to be true) we think it highly reasonable to have comply'd with the Motion and Request of the said Lords, that the said *Pancier* and *Skeene* might be examin'd at the Bar of this House, in Relation to that Matter only, the like Request for the clearing the Reputation of any Noble Lord, when he hath thought it unjustly aspers'd, having never been denied, that we know of, but on the contrary, it was not long since granted, in the Case of the Earl of *Sunderland*, tho' the Examination which he thought reflected on his Honour, was not come into Print, when he made his Complaint, which according to our Judgment, was not so strong a Case for granting the Motion, as the present is.

II. Because the said Deposition, as far as it is printed, contains nothing but what the Deponent heard another say (except as it contains a Charge on *Skeene* for saying it) we think it was very natural and proper, as well for the Advancement of Justice, as for the Vindication of the Noble Lords requesting it, to trace the said Hearsay, if possible, to the Fountain Head, or at least so far as to know from the Person charg'd with relating it, whether he would deny his having related it, or if not, whether he would confess the Falsity of what he had related, or undertake to make it good by his own Testimony, or otherwise.

III. We think there could be no Inconveniency in examining as mov'd, to find whether there was any, and what Foundation for this Hearsay; it not being an Anticipation of the Course of Justice, (as examining a Part of the Evidence against any Man, or a Part of an Accusation, would be) since the swearing what one Man said of a third Person, is in no sort, Evidence either in Law or Reason, to support a Conviction, or even to ground an Accusation upon, in any Form, whatsoever.

IV. Since a meer Hearsay being no Evidence in the least Degree, cannot be made a Foundation for any legal Proceeding, it is impossible for any noble Lord, whose Honour may be affected by it, to hope to clear himself on any Tryal, or other like Opportunity, that can be given him to make his Defence; and therefore since there is no other Method that we can think of, so proper or effectual in our Opinions, as an Examination, of the Nature of that mov'd for, we think it ought to have been order'd, and that every noble Lord may possibly in time be hurt by the Consequence of this Precedent.

V. We think it, that the examining, as mov'd for, into this Hearsay only, could not have made any Difference with the other House, since it is inconceivable by us, that any Number of Gentlemen, who may have by Accident (for we hope it is no otherwise) in setting forth the Deposition of *Pancier*, as a Charge against *Skeene*, happen'd to asperse the Reputations of some of the Peers of the Realm, could resent either that the Lords should desire, or the House permit them to clear themselves as soon and as effectually as possible of that Hearsay.

<i>Strafford.</i>	<i>Craven.</i>	<i>Compton.</i>
<i>Fr. Cestrien.</i>	<i>Berkeley, Str.</i>	<i>Guilford.</i>
<i>Aylesford.</i>	<i>Bruce.</i>	<i>Cowper.</i>
<i>Arundel.</i>	<i>Litchfield.</i>	<i>Willoughby, Br.</i>
<i>Bathurst.</i>	<i>Scarsdale.</i>	<i>Foley.</i>
<i>Bingley.</i>	<i>Anglesey.</i>	<i>Weston.</i>
<i>Hay.</i>	<i>Bristol.</i>	<i>Exeter.</i>
<i>Osborne.</i>	<i>Poulet.</i>	<i>Uxbridge.</i>

S I R,

Tower, March 23. 1722.

HAVING receiv'd a Copy of a Bill for Inflicting certain Pains and Penalties upon me, for suppos'd Crimes, of which I am Innocent; I hope I shall be allow'd to have Sir Constantine Phipps, and William Wynne, Esq; for my Council; and Mr. Joseph Taylor, and Mr. William Morrice, for my Solicitors, to assist me, in Order to the making my Defence, and that they may have free Access to me, to receive my Instructions, and give me their Advice in private. I beg the Favour of your communicating this to the House, and am with Respect,

Sir, Your most Obedient

Humble Servant,
Fra. Roffen.

To the Rt. Hon. Spencer
Compton, Esq; Speaker
of the House of Com-
mons.

Dis

Die Veneris, 29. Martij 1723.

A Petition of *Francis, Lord Bishop of Rochester*, was presented and read, praying the Direction of the House, as to his Conduct in respect of a standing Order prohibiting on a Penalty, any Lord to appear by Council before the House of Commons, to answer any Accusation there.

Which said Order being read,

A Motion was made; and the Question being put, That the said Bishop being a Lord of Parliament, ought not to answer, or make his Defence by Council or otherwise in the House of Commons, to any Bill or Accusation there depending :

It was Resolv'd in the Negative,

Dissentient.

I. Because we conceive, the permitting the Lord Bishop of *Rochester* to make his Defence in the House of Commons, would be directly contrary to the Words and Meaning of the standing Order of the House, bearing Date 20th *January* 1673, which expressly and clearly Orders, That for the future, no Lord (which extends to Lords Spiritual as well as Temporal) shall go down to the House of Commons, or send his Answer in Writing, or appear by Council, to answer any Accusation there. And it is observable, that this Order is worded absolutely, and not qualified by the Words (without Leave of the House) as the following standing Order of the 25th of *November* 1696, which prohibits Lords from going into the House of Commons, while the House is sitting, is qualified; from which different penning, as well as from the Preamble of the said first mention'd Order, (which shews the Mischief design'd to be prevented, was the giving Leave in Cases of Lords desiring it, to appear, or answer to Accusations in the House of Commons) we infer, that the said Order of *January* 1673, was meant as a Rule for all future times, that if Leave should be ask'd by a Lord of Parliament, to answer or make a Defence to an Accusation (in any Form as we conceive) in the House of Commons, it ought to be denied, as deeply intrenching on the Privileges of this House.

II. The said standing Order, in Affirmance of which, the Question was mov'd, ought to be of the greater Weight in our Opinions, it having been founded on the Consideration and Report of a Committee, (to whom it was particularly re-

ferr'd, to consider the Practice of Lords desiring Leave, to answer Accusations in the House of Commons) on the Perusal of Precedents in that Committee, and upon serious Consideration and Perusal of the same Precedents in the House it self.

III. We cannot apprehend, but that a Bill by which Crimes are charg'd, and a Preparation is made to inflict Penalties, if the Crimes are prov'd, contains very clearly an Accusation, especially when a Day is given, and Council allow'd by the House of Commons, to the Person against whom the Crimes are alledg'd to make a Defence to the same, which Proceeding, tho' in the Legislative Capacity of that House, carries in it all the essential Parts of a judicial Tryal; and we therefore conceive, that this House ought to be more jealous of their Members answering in the House of Commons, an Accusation in this Form, rather than in any other, since thereby, they submit themselves to try the Point of their being Guilty, or not Guilty in the House of Commons, and that in Order to receive the Sentence and Judgment of that House, by passing or rejecting the Bill; and this in our Opinions, more deeply intrenches (as the standing Order expresses it) on the Privileges of this House, than a Lord's going down to the House of Commons, during a Debate there, to prevent an Impeachment doth; the latter being only to prevent an Accusation, but the former is (as we clearly conceive) to answer an Accusation there, the very Thing prohibited by the standing Order.

IV. We think the Accusation which Lords are prohibited to answer by this standing Order, must be chiefly, if not only, understood of an Accusation couch'd in a Bill (as in the present Case) since we never heard that any Lord of Parliament did at any time answer to, or defend in Person, or by Council, an Impeachment in the House of Commons, tho' they may have gone down to that House by Connivance to prevent such Impeachment; and therefore Lords defending themselves in the House of Commons against an Impeachment, could not be the Mischief intended to be cur'd by the said standing Order.

V. That the House of Commons, on Bills to inflict Penalties, do proceed (strictly speaking) in their Legislative Capacity, is certainly true, and yet it is plain to us, that in reality, they partake in such Cases, with the House of Lords in the Judicature, or which is all one, in trying and adjudging Offenders to Punishment: And tho' the Lords should in very extraordinary Cases, think fit to concur in such a Method

rhod of Punishing, yet it is, in our Opinions, going by much too far, for the Lords to permit any of their Body, to make Defence in the House of Commons, either by himself or Council, which is letting themselves down to a very great Degree, and giving an unnecessary Encouragement to that Manner of Proceeding; and when Lords have so far submitted to this Course, we think there is little Reason to expect, that afterwards the Commons will ever appear at the Lords Bar, as Accusers, when they can by this Way, make themselves as much Judges, even over Lords, as in this Proceeding by Bill the Lords themselves are.

VI. Tho' Lords, by not being permitted to appear, either in Person, or by Council, to defend themselves in the House of Commons, may be thought possible to lose some Advantage in their Defence, yet we think it was, and is the true Meaning of the said standing Order first mention'd, that a Lord should rather suffer something of Inconvenience in that Particular, and commit his Cause to God, and the Justice of the House of which he is a Member, and who are his proper Judges, than in any Degree, debase or derogate, from the Legal State and Dignity of the Lords in General.

VII. Altho' there be, (as we conceive) a very manifest and important Difference in Reason, as to the Matter of this Question, between the Case of Bishops (who are declar'd by the standing Order of the 23^d of May 1628, to be only Lords of Parliament, and not Peers, for they are not of Tryal by Nobility) and that of Peers of the Realm, who undoubtedly, for Matters of Treason and Felony, are triable by their Peers only; yet, since by the standing Order first mention'd, Bishops are as much and clearly prohibited to answer any Accusation in the House of Commons, as the Peers of Lords Temporal are, we cannot but apprehend with the deepest Concern, that this Case may be us'd hereafter as a Precedent (tho' as we take it, far from being a Precedent in Point) to bring by Degrees, the Peers of the Realm to defend themselves against Accusations of the like Nature in the House of Commons, which if once brought to be a Practice, we are of Opinion that the Peers of the Realm, would in great Measure be degraded from their Peerages, and so, by weakening and debasing the Order of Nobility, which in its Institution was meant, or at least hath prov'd, a Lustre and Security to the Crown, the Safety as well as Dignity of the Crown itself, may be hereafter in a great Degree impaired.

Scarsdale.

<i>Strasdale.</i>	<i>Gower.</i>	<i>Trevor.</i>
<i>Aylesford.</i>	<i>Dartmouth.</i>	<i>Guilford.</i>
<i>Compton.</i>	<i>Arundel.</i>	<i>Cowper.</i>
<i>Bathurst.</i>	<i>Poulet.</i>	<i>Hay.</i>
<i>Bruce.</i>	<i>Strafford.</i>	<i>Litchfield.</i>
<i>Uxbridge.</i>	<i>Asbburnham.</i>	<i>Weston.</i>
<i>Montjoy.</i>	<i>Foley.</i>	<i>Bingley.</i>

S I R,

Tower, April 4th. 1723:

B *Tt the Votes of the House of Commons, of March 11. I find it had been*
Resolv'd,

That it appears to this House, that *Francis*, Lord Bishop of *Rocheſter*. was principally concern'd in forming, directing, and carrying on a wicked and detestable Conspiracy, in invading these Kingdoms with a Foreign Force, and for raising Insurrections and a Rebellion at Home in Order to subvert our present happy Establishment in Church and State, by placing a Popish Pretender on the Throne.

Upon duly weighing which Resolution, I have been in some Doubt how far it might be fit for me, tho' conscious of my own Innocence, to attempt to clear it before that Honourable House, in Contradiction to so solemn a Declaration already made by it; especially since nothing else is charg'd upon me in the Bill, against which my Council were to plead, but what is contain'd in that Vote.

But it has also happened, that one of my Council, on whose Assistance I greatly rely'd, has been so much employ'd in the Defence of another Person, as not to have had time, fully to instruct himself for mine.

On these Accounts, I shall decline giving this House any Trouble to Day, and be content with the Opportunity I shall have, (if the Bill goes on) of making my Defence before another, of which I have the Honour to be a Member.

Be pleas'd to Communicate this to the House. I am with Respect,

*Sir, Your most Obedient,
 Humble Servant,
 Fra. Roffen.*

*To the Rt. Hon.
 Spencer Compton, Esq;
 Speaker of the House
 of Commons.*

Die

Die Veneris, 26 Aprilis. 1723.

The Question was put whether, That the Opinion of the Judges be asked, whether Extracts out of Letters, written by the King's Ministers Abroad, and others to the Secretaries of State here, attested by the Secretaries of State, and examined by the Lords of the Committee and found to agree with the Originals, which are yet Extant, and remain in the Hands of the Secretaries of State, and contain Particulars, which is not consistent with the Safety of the Publick to divulge, as hath been affirmed to the House by Two Secretaries of State and the Lords Committees, offer'd to be produced to prove the first Part of the Preamble of the Bill, which recites a detestable Conspiracy; for the Purposes of the Bill, could be read as Evidence, in the Courts below, in any Prosecution of *John Plunket*.

It was Resolved in the Negative.

Dissentient.

Cardigan.

Scarsdale.

Aylesford.

Uxbridge.

Brooke.

Exeter.

Bathurst.

Masham.

Anglesey.

Bruce.

Gower.

Poulet.

Berkeley, Str.

Foley.

Weston.

Dartmouth.

Guilford.

Craven.

Lechmere.

Litchfield.

Fr. Cestrien.

Compton.

Willoughby Br.

Then a Motion was made, and the Question put, whether the said Extracts shall be read in Proof of the Allegations in the Preamble of the said Bill.

It was Resolved in the Affirmative.

Dissentient.

Cardigan.

Scarsdale.

Aylesford.

Uxbridge.

Brooke.

Exeter.

Bathurst.

Masham.

Anglesey.

Bruce.

Gower.

Poulet.

Fr. Cestrien.

Foley.

Weston.

Dartmouth.

Guilford.

Craven.

Lechmere.

Litchfield.

Strafford.

Compton.

Willoughby Br.

Berkeley Str.

It was proposed that the Examination of *Philip Neyno* (since dead) be read in Proof of the Conspiracy in General.

And a Question being stated thereupon, it was proposed to add these Words, (viz.) *but not taken upon Oath nor signed by him.* After Debate,

The Question was put, whether those Words shall be made Part of the Question.

It was Resolved in the Negative.

Dissentient.

Strafford.

Scarsdale.

Cardigan.

Fr. Cestriens.

Gower.

Bruce.

Dartmouth.

Willoughby, Br.

Weston.

Anglesey.

Foley.

Litchfield.

Compton.

Exeter.

Uxbridge.

Aylesford.

Craven.

Brooke.

Pomfret.

Poulet.

Masbam.

Then the Question was put, whether the Examination of *Philip Neyno*, (since dead) shall be read in Proof of the Conspiracy in General.

It was Resolved in the Affirmative.

Dissentient.

Strafford.

Fr. Cestriens.

Gower.

Bruce.

Dartmouth.

Willoughby Br.

Weston.

Scarsdale.

Anglesey.

Foley.

Litchfield.

Compton.

Exeter.

Uxbridge.

Cardigan.

Aylesford.

Craven.

Brooke.

Poulet.

Masbam.

Die Luna, 29 Aprilis. 1723.

Hodie vice lecta est Billa, Entituled, An Act to Inflict Pains and Penalties on John Plunket.

And after Debate,

The Question was put whether this Bill shall pass?

It was Resolved in the Affirmative.

Dissentient.

I. Because Bills of this Nature, as we conceive, ought not to pass, but in Case of evident Necessity, when the Preservation of the State plainly requires it, which we take to be very far from the present Case, the Conspiracy having been

been detected so long since, and the Person accused, seeming to us, very Inconsiderable in all Respects; and who from the many gross Untruths, it now appears he has wrote to his Correspondents Abroad, must appear to have been an Impostor and Deceiver, even to his own Party.

II. Proceedings of this Kind tending to convict and punish, are in their Nature, tho' not in Form, Judicial; and do let the Commons, in Effect, into an equal Share with the Lords in Judicature; which the Lords ought to be very Jealous of doing, since the Power of Judicature is the greatest distinguishing Power the Lords have; and there will be little Reason to hope, that if Bills of this Nature are given way to, by the Lords, the Commons will never bring up Impeachments, or make themselves Accusers only, when they can act as Judges.

III. This Bill, in our Opinion, differs materially from the Precedents cited for it: as in the Case of Sir *John Fenwick*; 'tis plain, by the Preamble of that Bill, that the Ground most rely'd on to justify Proceeding against him in that Manner, was, that there had been two legal Witnesses proving the High-Treason against him, that a Bill was found against him on their Evidence, and several Times appointed him for a legal Tryal thereon, in the Ordinry Course, which he procured to be put off, by undertaking to discover, till one of the Evidences withdrew, so that it was solely his own Fault that he had not a legal Tryal by Juries: All which Circumstances, not being in the present Case, we take it they are not at all to be compared to one another.

IV. As to the Acts, which passed, to detain *Counter* and others, concerned in the Conspiracy to assassinate the late King *William* of Glorious Memory, we conceive, those Acts, were not in their Nature Bills of Attainder, as this is; but purely to enable the Crown to keep them in Prison, notwithstanding the Laws of Liberty; whereas this is a Bill to inflict Pains and Penalties, and does import a Conviction and Sentence on the Prisoner, not only to lose his Liberty, but also all his Lands and Tenements, Goods and Chattles, of which having none, as we believe, we cannot apprehend why it was inserted; and this Bill, not drawn on the Plan of *Counters*, &c. unless it was to make a Precedent for such Forfeitures, in Cases of Bills, which may hereafter be brought to convict persons, who have great Estates, upon Evidence, which does not come up to what the Law, in being, requires.

D

V. If

V. If there be a Defect, of Legal Evidence, to prove this Man guilty of High-Treason, such Defect always was and we think if Bills of this Nature, brought to supply Original Defects in Evidence, do receive Countenance, they may become Familiar, and then many an Innocent Person may be reached by them, since it is hard to distinguish, whether the Defect proceed from the Cunning and Artifice, or from the Innocence of the Party.

VI. This Proceeding by Bill, does not, in our Opinions, only tend to lay aside the Judicial Power of the Lords, but even the Use of Juries, which distinguishes this Nation from all its Neighbours, and is of the highest Value to all who rightly understand the Security and other Benefits accruing from it; and whatever tends to alter, or weaken that great Privilege, we think, is an Alteration of our Constitution for the worse, tho' it be done by Act of Parliament; and if it may be supposed, that any of our Fundamental Laws were set aside by Act of Parliament, the Nation, we apprehend, would not be at all the more comforted from that Consideration that the Parliament did it.

VII. It is the Essence of Natural Justice, as we think, but it is most surely the Law of the Realm, that no Person should be try'd more than once for the same Crime, or twice put in Peril of losing his Life, Liberty or Estate; and we acquiesce in the Opinion of the Judges, that if this Bill pass into a Law, *Plunket* cannot be again prosecuted for the Crimes contained in the Preamble of the Bill; yet it is certain, that if a Bill of this kind should happen to be rejected by either House of Parliament, or by the King, the Person accused might be attacked again and again in like Manner, in any other subsequent Session of Parliament; or indicted for the same Offence notwithstanding that either House of Parliament should have found him Innocent, and not passed the Bill for that Reason; and we conceive it a very great Exception to this Course of Proceedings, that a Subject may be condemned and punished but not acquitted by it.

VIII. We think it appears in all our History, that the passing Bills of Attainder, as this, we think, in its Nature (except as before is said in Cases of absolute and clear Necessity) have proved so many Blemishes to the Reigns in which they passed, and therefore, we thought it our Duty in Time, and before the Passing this Bill as a Precedent, to give our Advice and Votes against the Passing it, being very unwilling that any Thing should pass, which in our Opinion would in the least derogate from the Glory of this Reign.

IX. We apprehend it to be more for the Interest and Security of his Majesty's Government, that Bills of this Nature should not pass, than that they should, since persons, who think at all, cannot but observe, that in this Case some Things have been receiv'd as Evidence, which would not have been receiv'd in any Court of Judicature; that Precedents of this Kind are naturally growing (as we think this goes beyond any other which has happen'd since the Revolution;) and if from, such like Observations they shall infer, as we cannot but do, that the Liberty and Property of the Subject, becomes by such Examples, in any Degree more precarious than they were before, it may cause an Abatement of Zeal for a Government, founded on the Revolution. We cannot, as we think, be compensated by any the good Consequences, which are hoped for, by those who approve this Bill.

<i>Scarsdale.</i>	<i>Craven.</i>	<i>Willoughby de</i>
<i>Poulet.</i>	<i>Strafford.</i>	<i>Brooke.</i>
<i>Cowper,</i>	<i>Bathurst.</i>	<i>Foley.</i>
<i>Guilford,</i>	<i>Anglesey.</i>	<i>Berkeley Strat.</i>
<i>Weston.</i>	<i>Bruce.</i>	<i>Aylesford.</i>
<i>Ashburnham.</i>	<i>Dartmouth.</i>	<i>Litchfield.</i>
<i>Brooke.</i>	<i>Masham.</i>	<i>Hay.</i>
<i>Compton.</i>	<i>Uxbridge.</i>	<i>Lechmere.</i>
<i>Fr. Cestriens.</i>	<i>Exeter.</i>	<i>Cardigan.</i>
<i>Oxford & Mortimer.</i>	<i>Osborne.</i>	<i>Bingley.</i>
		<i>Trevor.</i>

Die Veneris, 3 Maij. 1723.

Hodie 3^a Vice lecta est Billa. An Act to inflict Pains and Penalties on *George Kelly*, alias *Johnson*.

A Rider was offered to be added to the said Bill, which was Read by the Clerk, as follows, *viz.*

Provided always that if the said *George Kelly* alias *Johnson*, shall at any Time give Security, such as shall be approved of by the Two Chief Justices, that he will, within one Month, depart his Majesty's Dominions, and not return again without the Licence of his Majesty, his Heirs and Successors; Then the said *George Kelly* alias *Johnson*, shall be at Liberty to depart, any Thing in this Act to the Contrary notwithstanding.

And a Motion being made, and the Question being put, whether the said Rider shall be read a Second Time:

It was resolv'd in the Negative.

D 2

Dissentient

Dissentient.

Osborn.
Guilford.
Scarsdale.
Aylesford.
Ashburnham.
Masham.
Hay.
Exeter.
Montjoy.
Stratford.
Bruce.
Dartmouth.

Litchfield.
Berkeley of Strat.
Bingley.
Anglesey.
Stawel.
Trevor.
Compton.
Cardigan.
Willoughby de
Brooke.
Craven.
Northampton.

Gower.
Poulet.
Weston.
Middleton.
Fr. Cestriens.
Bathurst.
Salisbury.
Foley.
Brooke.
Uxbridge.
Arundel.

Then the Question was put, Whether the said Bill shall pass?
It was Resolved in the Affirmative.

Dissentient.

I. Because we think, there is no Reason, for the Legislative to pass a Law, *ex post facto*, to punish this Person for the Treasonable Correspondence he is accused of, he being in Custody, and may be brought to a Legal Tryal in one of the Courts of Justice.

II. We conceive the Want or Defect of such clear and plain Evidence, as by the Laws of this Kingdom, is required to convict any Person of High-Treason, no sufficient Reason to warrant the Exercise of the Legislative Power, in making a new Law for his Punishment, because such Laws being made for the Protection of Innocent Persons, from suffering by false, uncertain, and doubtful Evidence, every Subject is entitled to the Benefits of those Laws, when he shall fall under an Accusation of High-Treason.

III. Because, as we conceive, by the Rules of Natural Justice, Laws ought to be first made, as Directions for Men's Actions and Obedience, and Punishment inflicted for putting those Laws in Execution against Offenders; and that therefore, punishing by a Law, made after the Offence committed, is not agreeable to Reason or Justice, except only in the Case of real and apparent Necessity, to prevent the immediate Ruin of a Government, which we do not think to be the present Case.

IV. Because the Proceedings of the Legislative Power in making Laws, can be govern'd by no Rule, but that of their own Discretion and Pleasure, and therefore the making Laws to

to inflict Pains and Penalties on particular Persons, must, as we conceive, tend to expose the Lives, Liberties and Properties of the Subjects to an Arbitrary Discretion, and consequently render them precarious in the Enjoyment of those Blessings, which by our excellent Constitution and Government, they have always had an uncontrollable Right to hold and enjoy, till forfeited for some Crime, and the Person offending legally convicted thereof, upon such full and positive Proof as the Laws of this Kingdom do require.

V. Because, as we conceive, it would be of dangerous Consequence to the Safety of innocent Persons, to allow Copies of Letters taken by the Clerks of the Post-Office, tho' sworn by them to be true Copies, to be given in Evidence against any Person accused of High Treason, especially, when such Copies are not compar'd with the Originals after they are taken, and the Original Letters forwarded on by them are not produc'd : Because the Originals not being produc'd, is depriv'd of an Opportunity of falsifying those Copies, and tho' there should be any Mistake committed by the Clerk in copying, whether wilfully, or by Negligence, such Mistake cannot be detected, for want of the original Writing to compare the Copies with.

VI. Because the Proof of Letters or other Writing, in criminal Prosecutions, by similitude and comparison of Hands, being, as we conceive, a very slight and weak Evidence, because Hands may be too easily counterfeited, and the Persons examin'd cannot speak positively but to their Belief, and therefore not liable to be prosecuted for Perjury, hath, as we conceive, been very justly discourag'd, in such times when the Administration of Justice hath been most impartial ; and Convictions of High Treason, grounded on such Evidence, have been revers'd by Act of Parliament, for that and other Reasons.

Pomfret.
Stawell.
Northampton.
Anglesey.
Cardigan.
Exeter.
Montjoy.
Willoughby de Brook.
Bruce.
Trevar.

Denbigh.
Craven.
Scarsdale.
Strafford.
Bingley.
Bathurst.
Weston.
Hay.
Osborne.
Fra. Cestriens.

Middleton.
Aylesford.
Tadcaster.
Uxbridge.
Arundell.
Masbam.
Berkeley of Str.
Compton.
Foley.
Broeke.
Litchfield.

Litchfield.
Poulet.
Wharton.

Guilford.
Dartmouth.
Salisbury.

Gower.
Ashturnham.

Die Luna, 6 Maii 1723.

A Motion was made, and the Question was put, whether the Advice enclosed in a Letter from Sir *Luke Schaub*, to the Lord *Carteret*, be read, tho' this House be not acquainted with the Name of the Person who gave that Advice.

It was Resolved in the Affirmative.

Dissentient.

Strafford.
Osborne.
Aylesford.
Fr. Cestrien.
Cowper.
Bruce.
Dartmouth.
Exeter.
Willoughby Br.
Bingley.

Craven.
Northampton.
Gower.
Masham.
Brooke.
Denbigh.
Trevor.
Montjoy.
Compton.
Ashturnham.

Salisbury.
Scarsdale.
Poulet.
Anglesey.
Litchfield.
Guilford.
Foley.
Weston.
Cardigan.
Berkeley, Str.

A Motion was made, and the Question was put, that — *Willes* be oblig'd to produce his Key of the Cypher.

It was resolv'd in the Negative.

Dissentient.

Northampton.
Scarsdale.
Cowper.
Brooke.
Guilford.
Masham.
Litchfield.
Osborne.
Weston.
Compton.
Ashturnham.

Salisbury.
Fr. Cestrien.
Wharton.
Cardigan.
Aylesford.
Foley.
Exeter.
Montjoy.
Willoughby Br.
Denbigh.
Oxford & Mortimer.

Strafford.
Poulet.
Bruce.
Trevor.
Gower.
Anglesey.
Dartmouth.
Berkeley Strat.
Bingley.
Craven.

Die Martis, 7 Maii 1723.

A Motion was made: And the Question being put, That it is the Opinion of this Houle, That it is inconsistent with the publick Safety, as well as unnecessary for the Prisoner's Defence, to suffer any further Enquiry to be made upon this Occasion, into the Warrants which have been granted by the

the Secretaries of State, for the stopping and opening Letters, which come or go by the Post, or into the Methods that have been taken by the proper Officers at the Post-Office, in Obedience to such Warrants.

It was resolv'd in the Affirmative.

Dissentient.

I. We humbly apprehend, that in all criminal Prosecutions, the cross examining of Witnesses is necessary, for the Defence of the Prisoner, and for the Satisfaction of those, who are to judge of the Facts alledg'd against him, in order to the discovering of Truth, and detecting any fraudulent Evidence which should be offer'd; and the Resolution above recited does, in our Opinion, debar the Bishop of *Rocheſter*, and every other Person concern'd, from asking any Questions of the Clerks of the Post-Office, who are brought as Witnesses to the Bar, relating to the stopping and opening of post-Letters; tho' Letters pretended to be stop't and open'd at the Post-Office, are read as Evidence against the prisoner, and we conceive, that the preventing any further Enquiry on these Heads, must lay this House under great Difficulties, when they come to form a Judgment on those Letters, the Validity of which, in a great Measure, depends on the proof given of their having been truly stop't and open'd, as asserted.

II. We apprehend it to be impossible for this House to determine, that the Enquiry which is desir'd, is unnecessary to the Defence of the prisoner, till he shall come to make the Application, and we conceive, he should have the Liberty of asking what Questions he or his Council think proper, of the Clerks of the post-Office, relating to the stopping and opening of Letters, without acquainting the House what use he intends to make of their Answers; and this appears to us to be highly reasonable, essential to Justice, and warranted by the Methods, which this House has hitherto allow'd the Council for the Support of the Bill to proceed in, who have, during the whole Course of this Examination, reserv'd the Application of the Evidence they have offer'd, till they should judge convenient to make it.

Northampton.

Foley.

Milham.

Exeter.

Bingley.

Cardigan.

Stratford.

Litchfield.

Bruce.

Compton.

Hwy.

Pomfret.

Wharfan.

Scarſdale.

Aylesford.

Trevor.

Denbigh.

Angleſy.

Aſhburnham.

Uxbridge.

Osborne.

Poulet.

Poulet.
Craven.

Bathurst.
Gower.

Weston.
Willoughby of Broke.

Die Veneris, 10 Maii 1723.

A Motion was made, That this House doth not think it just, that the Witness produc'd at the Bar, should be examin'd upon any Impressions, but such as shall be made, and in such Manner as shall be directed by the House. And a Question being stated thereupon: After Debate,

The previous Question was put, whether that Question shall be now put.

It was resolved in the Affirmative.

Dissentient.

Scarsdale.

Poulet.

Affburnham.

Fr. Cestriens.

Northampton.

Strafford.

Oxford.

Anglesey.

Cardigan.

Litchfield.

Bruce.

Trevor.

Hay.

Denbigh.

Willoughby Br.

Dartmouth.

Craven.

Salisbury.

Compton.

Pomfret.

Gower.

Aylesford.

Foley.

Cowper.

Bathurst.

Exeter.

Bingley.

Then the main Question was put, That this House doth not think it just, that the Witness produc'd at the Bar should be examin'd upon any Impressions, but such as shall be made, and in such Manner as shall be directed by the House.

It was resolved in the Affirmative.

Dissentient.

Scarsdale.

Cowper.

Affburnham.

Fr. Cestriens.

Willoughby Br.

Northampton.

Poulet.

Oxford.

Strafford.

Pomfret.

Denbigh.

Compton.

Exeter.

Aylesford.

Bingley.

Craven.

Bathurst.

Foley.

Trevor.

Dartmouth.

Gower.

Hay.

Die Sabbati, 11 Maii 1723.

A Motion was made, and the Question was put, that George Kelly alias Johnson, now a Prisoner in the Tower of London, be brought to the Bar of this House on Monday Morning next, to be examin'd upon Oath, on the Bill, entitled, *An Act to inflict Pains and Penalties on Francis Lord Bishop of Rochester.*

It was Resolved in the Negative.

Dissen-

Dissentient.

I. Because, we think it unquestionable, that as the said *Kelly* is a competent legal Witness to the Matters charged by the Bill, against the Bishop, and could not be legally refused to be sworn as such, if the Bishop were on his Tryal for the same, in the ordinary Course of Justice, and that whether the said *Kelly* was produced, either for or against the Bishop; and we conceive, if the Council for the Bill, had thought fit to have produced him in Support of the Bill, that even no legal Objection could have been made by the Bishop's Council against his being so produced and sworn; the Bill passed this House against the said *Kelly* not having received the Royal Assent, and there not being in the said Bill, in our Opinions, any Thing that can destroy, even his legal Testimony, when the same is passed into a Law.

II. Because the three Letters, dated the 20th of *April* 1722, supposed to contain Treasonable Correspondence with the pretender, and some of his Agents, have been made the Principal Charge against the Bishop, and have been endeavoured to be prov'd, to have been dictated to the said *Kelly*, by the Bishop, at or about the Time of their Date; but this not being as yet done, as we think, by direct and positive Proof, by any living Witness of the Fact, but by Circumstances only; We think it most proper, and most safe and just, to endeavour to discover the Truth of that material Fact, by the best Evidence the Nature of the Thing can admit of; and that this House should not be left under the Difficulties of Judging on this extraordinary Occasion, from doubtful, Circumstances, if the Fact may be cleared by certain positive proof, and the Examination of a Competent and a Living Witness upon Oath, at the Bar of this House.

III. Because several living Witnesses have been examin'd on Oath, at the Bar of this House, on behalf of the Bill, in order to prove, by their positive Testimony and other Circumstances, that the Bishop did not dictate, or direct, or was any way privy to the writing the said Letters, or any of them, which has in our Judgment, render'd it of yet greater Importance, that the supposed Writing of those Letters should be brought under the most strict and solemn Examination before the Bill has passed this House.

IV. Because the said *Kelly*, tho' examined before Committees of both Houses of Parliament, and elsewhere, hath not to our Knowledge, been yet examined on Oath to the Matters contained in this Bill; and it having appeared to us, in other Instances on this Occasion, particularly of Mrs. *Barnes*

Examination for the Bill, and *Bingley* against it, who have materially varied their Examinations at the Bar of this House from their former Examinations, at the same Time declaring, that their former Examinations were not taken or sworn to by them; we think it may be both dangerous and derogatory to the Honour and Justice of this House, not to examine on Oath, a Person capable of discovering the Matter of Fact, on which the Justice of the Bill against the Bishop must depend; and especially, after the said *Kelly* hath declared, in the most solemn Manner, next to that of his being on Oath, that the Bishop did not dictate, or was privy to the Writing the said Letters, or any of them; and the Bishop himself, in his Defence, having also, in the most solemn Manner of Asseveration, declared his Innocence in this Particular, and expressly referring to the former Asseverations of the said *Kelly*, as we conceive, as a Testimony in Confirmation of his own Asseverations.

V. Because, we conceive, that the said *Kelly* was not only a legal Witness, for or against the Bishop, in the strictest Construction of Courts of Judicature; but the Examination of him upon Oath, on this Bill, is in every Respect whatsoever, in our Judgment, less liable to Objection, than many, or most other Evidences, which on this Occasion, have been allow'd; because the Bill passed by this House against the said *Kelly*, if it obtains the Royal Assent, as is most probable, doth in our Judgment of Law, as hath been declared by the Judges, acquit him of any future Prosecution for the said Treasons therein charged upon him; and there is no Judgment or Punishment inflicted upon him in the said Bill, which can, when pass'd, destroy his Capacity of giving Evidence on any occasion; and the same having been passed by this House, and not passed the Royal Assent, leaves the said *Kelly*, in our Opinions, under less Influence, either of Hopes or Fears, than such Witnesses which have been examin'd on this occasion, under Commitments and Charges of High-Treason; and as we conceive, less liable to that Objection, than the Declaration of *Philip Neyne*, which has been read against the Bishop, tho' never signed or sworn to by him; and (the said *Neyne*, some Months since drowned, in endeavouring his Escape,) which Declaration appears to us to have been made by him, under the strongest Influences of Guilt and Terror.

VI. We think the Crimes charged in the Bill against the said *Kelly*, are in their Nature, distinct and independent on those charged upon the Bishop, *Kelly's* Guilt in writing the said treasonable Letters prov'd upon him being the same, tho' the

the Bishop be altogether Innocent in Relation thereto; for which Reason, as we conceive, this House did refuse to permit *Kelly* on his Behalf, to give Evidence that the Bishop did not dictate the said Letters; for which Reason, we are of Opinion, the Evidence which *Kelly* might have given, touching the Bishops dictating the said Letters or not, would have produced no Consequences at all, with Regard to the Bill passed against himself, altho' it must necessarily have contributed to the proof of the Guilt or Innocence of the Bishop.

VII. This House having, with great Honour and Justice, declared to several persons, produced as Witnesses on this Occasion, that it was not required from them to depose to any Thing, which did or might tend to their own Accusation; the Testimony of the said *Kelly*, if he had been examined on Oath, we doubt not, would have been taken under the same just Indulgence; and if he had submitted to have been examined on Oath, to the Matters of this Bill, such his Examination being in that Respect voluntary, could not, in our Opinions, have been construed, as forced from him by the Authority of this House; and such Testimony, as he might have given, would have remain'd under the Consideration and Judgment of this House, as to its Credit and Influence for and against the Bill still does.

Scarsdale.
Dartmouth.
Northampton.
Berkeley Strat.
Compton.
Weston.
Bruce.
Brooke.
Hereford.
Strafford.
Pomfret.
Bingley.

Fr. Cestriens.
Cardigan.
Litchfield.
Gower.
Craven.
Denbigh.
Cowper.
Bathurst.
Foley.
Masham.
Asbburnham.
Guilford.

Oxbridge.
Middleton.
Wharton.
Lechmere.
Salisbury.
Anglesey.
Poulet.
Willoughby Br.
Aylesford.
Exeter.
Hg.

Die Mercurii, 15 Maii 1723.

Hodie 3a vice lecta est Billa, Entitled, An Act to inflict Pains and Penalties on Francis Lord Bishop of Rochester.

The Question was put whether this Bill shall pass?

It was Resolved in the Affirmative.

Dissentient.

I. Because the Objection, which we thought lay against the Bills of *Plunket* and *Kelly*, that the Commons were thereby in Effect, let into an equal Share of Judicature with the Lords,

Lords, does hold stronger, as we apprehend, against the present Bill; since by Means of it, a Lord of Parliament is in part try'd and adjudg'd to Punishment in the House of Commons, and reduced to a Necessity, either of letting his Accusation pass undefended in that House, or of appearing there; and as we take it, derogating from his own Honour, and that of the Lords in general, by answering or making his Defence in the Lower House of Parliament.

II. Because we are of Opinion, that the Commons would be very far from yielding to the Lords, any Part of those Powers and Privileges, which are properly theirs by the Constitution, in any Form, or under any pretext whatsoever; and it seems to us full as Reasonable, that the Lords should be as Tenacious of the Rights and Privileges which remain to them, as the Commons are on their Part.

III. We think this Bill against a Lord of Parliament, taking its Rise in the House of Commons, ought the rather not to have receiv'd any Countenance in this House; for that as it appeared to us by the printed Votes of the House of Commons, that House had voted the Bishop Guilty of all the Matters alledged against him in the Bill, before the Bill was brought into that House, and consequently, before the Bishop had any Opportunity of being heard; and altho' there be nothing absurd in passing such a Vote, in order to their Accusing by an Impeachment, yet it seems to us absolutely contrary to Justice, which ought to be unprejudiced to Vote any one Guilty, against whom they design to proceed in their Legislative Capacity, or in the Nature of Judges, before the Party has an Opportunity to be heard; or the Bill, which is to ascertain the Accusation, is so much as brought in.

IV. We are of Opinion, that no Law ought to be passed on Purpose to Enact, that any one be guilty in Law, and punished as such, but where such an extraordinary Proceeding is evidently Necessary for the Preservation of the State; whereas the Crime offer'd to be prov'd against the Bishop of Rochester is, as we apprehend, his partaking in a Traiterous Conspiracy against the Government, which Conspiracy, by God's Blessing, is detected, and as we hope, disappointed, without the Aid of such a dangerous Proceeding, as we conceive this to be.

V. Because there are certain known and establish'd Rules of Evidence, which are part of the Law of the Land, either introduced by Act of Parliament, or framed by Reason, and the Experience of Ages, adjust'd as well for the Defence of the Life, Liberty and Property of the Innocent Subject, as the

the Punishment of the Guilty; and therefore these Rules are, or ought to be, constantly adhered to, in all Courts of Justice; and as we conceive, should be also observed till alter'd by Law in both Houses of Parliament, whenever they try, judge and punish the Subject, tho' in their Legislative Capacity; but since in many Instances in this, and two other Proceedings by Bill, we have been taught by the Opinion of the House, that these Rules of Evidence need not to be observed by the Houses acting in their Legislative Capacity, we clearly take it to be a very strong Objection to this Manner of Proceeding, that Rules of Law made for the Security of the Subject, are of no use to him in it, and that the Conclusion is very strong, that therefore it ought not to be taken up, but where clearly Necessary, as before affirmed; and we desire to explain our selves so far upon the Cases of Necessity excepted, as to say we do not intend to include a Necessity arising purely from an Impossibility of Convicting any other Way.

VI. If it be admitted, that Traiterous Correspondence in Cyphers, and Cant Words, may to a Degree be discourag'd by this sort of Proceeding, in which Persons, as we think, are convicted on a more uncertain Evidence than the known Rules of Law admit of, yet we are of Opinion, that Convenience will be much more, than outweigh'd by the Jealousie it must of Necessity, as we conceive, create in the Minds of many of his Majesty's most faithful Subjects, that their Lives, Liberties and Properties, are not so safe, after such repeated Examples as they were before, and by the natural Consequence of this Apprehension, an Abatement of their Zeal for the Government may ensue, excepting such Persons as have more than ordinary Opportunities of being well instructed in Principles of the utmost Duty and Loyalty.

VII. We cannot be for the passing this Bill, because the Evidence produc'd to make good the Recital of it, or that the Lord Bishop of *Rochester* is guilty of the Matter he therein stands accus'd of, is in our Opinions, greatly defective and insufficient both in Law and Reason, to prove that Charge, the Evidence consisting altogether, to the best of our Observation, in Conjectures arising from Circumstances in the Interceptors, or on a Comparison of Hand Writings, resting on Memory only; and there being, as we think, no Proof of the Bishop's knowing of, or being privy to any of the said Correspondence; and as to the principal Part of the Charge against the Bishop, and on which, as we think, all the rest
does

does depend, *viz.* the dictating the Letters of the 20th of April 1722, which the House of Lords seem'd to have determin'd that Kelly wrote; we are of Opinion, that the Bishop has in his Defence, very clearly and fully prov'd, that he did not, nor possibly could dictate those Letters, or the Substance of any part of them to Kelly, either on the Day of their Date, or at any time during several Days next before, or next after the Day of their Date, nor was in any Capacity to write them himself, tho' the Letters must have been wrote within that Compass of time: and we are, on the whole, of Opinion, that the Proof and Probability of the Lord Bishop of Rochester's Innocence in the Matters he stood charg'd with, were much stronger than those of his Guilt.

Stafford.

Brace.

Foules.

Dartmouth.

Craven.

Hy.

Rushworth.

Gower.

Widdow.

Exeter.

Willoughby Br.

Comper.

Findley.

Scarsdale.

Salisbury.

Montjoy.

Cardigan.

Anglesey.

Foley.

Oshorne.

Uxbridge.

Arundel.

Guildford.

Middleton.

Hereford.

Stowell.

Denbigh.

Northampton.

Fr. Ceftrians.

Litchfield.

Ashburnham.

Treyor.

Compton.

Masbam.

Berkley Stras.

Pomfret.

Brooke.

Oxford and Mortimer.

I Dissent for the 6th and 7th Reasons of the foregoing Protestation, and for the following Reasons.

I. Because this extraordinary Method of Proceeding by Bills of this Nature, against Persons who do not withdraw from Justice, but are willing to undergo a legal Tryal, ought in my Opinion, to be supported by clear and convincing Evidence; and I apprehend there has been nothing offer'd to support the Allegations set forth in the Preamble of the Bill, to inflict Pains and Penalties on Francis Lord Bishop Rochester, but what depends upon decypher'd Letters, fore'd Constructions, and improbable Innuendo's.

II. I conceive, that the Examination of Philip Neyno, taken before the Lords of the Council, not sworn to or signed, which appears to me to be the Foundation on which the Charge against the Bishop of Rochester is built, has been, in my Apprehension, sufficiently prov'd by the positive Oaths of three

three Persons, two of which have been for several Months in separate Custodies, confirm'd by other Circumstances, to have been a false and malicious Contrivance of the said *Neyno*, to save himself from the Hands of Justice, and to work the Destruction of the Bishop of *Rochester*.

III. I do apprehend, that the Letters of the 20th of *April*, which are suggested to be wrote by *George Kelly*, alias *Johnson*, and dictated by the Bishop, have not been sufficiently prov'd to be the Hand-writing of the said *Kelly*: But on the contrary, it appears, to the best of my Judgment, that the Letter of the 20th of *August* (stopp'd at the Post-Office, and from which the Clerks of the Post-Office on their Memory only, swear they believe the said Letters, of the 20th of *April*, to be the same Hand-writing, though they never compar'd two Original Letters together during all that Time) has been prov'd by three Credible Witnesses, concurring in every Circumstance of their Testimony, and well acquainted with the Hand-writing of the said *Kelly*, not to be his Hand-writing: And I conceive, that the Difference they have observ'd in the Hand of the said *Kelly*, upon which they ground their Opinions, is sufficiently supported, by comparing the said Letter of the 20th of *August* with the Letters wrote by the said *Kelly* to the Lord *Townshend* and Mr. *De la Fay*, during the Time of his Confinement.

IV. I do not apprehend, that any Proof has been offer'd to support what has been so much insist'd on, and justly esteem'd Essential to the Charge, that the Bishop of *Rochester* dictated the Letters of the 20th of *April*; but it has appear'd, I conceive, that there has been no Intimacy between the Bishop and the said *Kelly*; and the Testimony of the Bishop's Servants concurring with the Evidence given on that Head, by the Persons that *Kelly* liv'd in the strictest Correspondency, with leaves, to the best of my Judgment, no Room to doubt, but that the Acquaintance between them was slender, and publick; and to suggest from thence, that the Bishop dictated the Letters of the 20th of *April*, when it appear'd that for many Days before, he could not possibly see the said *Kelly*, is, in my Opinion, repugnant to Reason, and contrary to Justice.

WHARTON

Die

Die Luna 20 Maij 1723.

Hodie 2d. Vice lect. est Billa, Entitled, An Act for granting an Aid to his Majesty, by laying a Tax upon Papists, and for making such other Persons as upon due Summons, shall refuse or neglect to take the Oaths therein mentioned, to contribute towards the said Tax, for reimbursing to the Publick Part of the great Expences, occasion'd by the late Conspiracies, and for discharging the Estates of Papists from the two third Parts of the Rents and Profits thereof, for One Year, and all Arrears of the same, and from such Forfeitures as are therein more particularly described: After Debate,

The Question was put, Whether the said Bill should be committed:

It was resolved in the Affirmative.

Dissentient.

Scarfeade,
Oxbridge,
Litchfield,

Foley,
Strafford,
Pomfret,

Bingley,
Ashburnham,
Gower.

Die Mercurij 23 Maij 1723.

Hodie 3a. Vice lecta est Billa, Entitled, An Act for granting an Aid to his Majesty, by laying a Tax upon Papists, &c.

The Question was put, Whether this Bill shall pass.

It was resolved in the Affirmative.

Dissentient.

Oxbridge,
Bingley,
Gower,
Foley,
Ashburnham,
Tadcaster,
Litchfield,

Scarfeade,
Montjoy,
Pomfret,
Hay,
Strafford,
Comper,
Weston,

Coventry,
Bathurst,
Fr. Cestrien,
Lechmere,
Willoughby de Brooke.

4 OCT 58

F I N I S

